IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1011 OF 2006
WITH
CIVIL APPLICATION NO. 1735 OF 2006

Sitaram Shivram Kadam and ors. ..Appellants

Vs.

Maruti Yashwant Deshmukh and ors. ..Respondents

Mr. S.M. Oak for appellants.
Mr. Sanjay Kshirsagar for respondent nos.1A and 2.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2007.

P.C.:

1. Heard the learned counsel for the apepllants-original defendants in RCS No. 22 of 1990. The present respondents had filed the said suit for removal of encroachment to the extent of 28 ft.x 15 ft. on the share of the plaintiffs i.e. property bearing Pardi No.56 admeasuring 4 R. situated within the limits of Birwadi, Taluka Mahad. It was contended that the suit land was in joint possession of the plaintiffs and the defendants. The defendants' father Shivram Kadam was a tenant on 1/2 of the plot i.e. 2 R. land and he had constructed a house on the said

portion. On 20/1/1937 Gopal Daji Deshmukh sold 1/2 portion of the suit land to defendants'' father Shivram. It was further contended that on 27/12/1989 the plaintiffs had noticed that the defendants was constructing a plinth admeasuring 28 ft. x 15 ft. and, therefore, they objected to the same and panchas from the community were also invited. The defendants did not stop and proceeded to construct the additional area encroaching upon the plaintiffs' 1/2 portion and, therefore, they approached the court.

2. Regarding the title of the respective parties on 1/2 share of the suit land totally admeasuring 4 R., there was no dispute. It was also conceded by the plaintiffs that the defendants' father had constructed a house and on 3/4/1988 an application was submitted to the Village Panchayat and permission was granted on 20/4/1988 to construct a new house by demolishing the old structure. However, it appeared that while constructing a new house and more particularly when the plinth was under construction, it was noticed that the defendants had encroached to the extent of 28 ft. x 15 ft., on the plaintiff's plot.

3. Before the trial court Shri Chandrakant Kamble, T.I.L.R. was examined at Exh.116 and on visiting the site he had drawn map at Exh.117. He pointed out that prior to 1988 the house occupied by the defendants was rightly on the plot of land owned by them but while constructing a new house, defendants had encroached to the extent of 28 ft. x 15 ft. and this encroached area was shown in black and red colours. He further stated that his findings about the encroachment were passed on the original map of 1988 when the city survey had taken place and he further stated that from the said old map, the old house of the defendants was smaller in size. The city survey enquiry register (Exh.145) was also an additional evidence in support of the depositions of this witness.

4. Thus, both the courts below have recorded a concurrent finding on the issue of encroachment by the defendants while constructing a new house in place of the old house and to the extent of 28 ft. x 15 ft. This fact finding exercise regarding the encroached portion and based on the T.I.L.R.'s evidence does not involve any substantial question of law for

consideration in this second appeal.

5. Hence, the second appeal is dismissed in limine.

6. Civil Application No. 1735 of 2006 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)